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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------|---------------------|------------------|
| 10/604,618 | 08/05/2003 | John Francis Baxter JR. | 1135.26.DIV2 | 1617 |

21901 7590 09/23/2004

SMITH & HOPEN PA
15950 BAY VISTA DRIVE
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CLEARWATER, FL 33760

EXAMINER

FOSTER, ROLAND G

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2645

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/604,618 | BAXTER | |
| | Examiner | Art Unit | |
| | Roland G. Foster | 2645 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Claim 2 appears to be unnumbered. Appropriate correction is required. The resulting misnumbered claims 2-5 have been renumbered 3-6.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,246,983 B1 to Zou et al. (hereinafter "Zou").

-With respect to claim 1, Zou teaches of a cellular telephone 14 (Fig. 1) that receives voice commands (abstract). Thus, the voice command zone exists around the proximity of the cellular telephone 14. The system comprises an array of voice command instructions relating to the operation of an electronic messaging system (Fig. 4 and col. 5, line 38 – col. 6, line 67). The voice commands are received through a microphone inherent to the cellular telephone. Responsive to a record command, an audio message is encapsulated into an email attachment and transmitted to a predetermined address (abstract, Fig. 4, and col. 3, lines 20-28) where the address is an e-mail SMTP address (col. 4, lines 27-36).

With respect to claim 2, see col. 5, lines 4-22.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zou as applied to claim 1 above, and further in view of U.S. Patent No. 5,353,376 to Oh et al. (hereinafter "Oh '376").

Zou fails to teach that the cellular telephone is located in an automobile passenger compartment, human-inhabitable dwelling, and that the telephone's microphone is omni-directional.

However, Oh '376 (similarly to Zou) teaches of a speech recognition based, cellular telephone system, where the cellular telephone is located in an automobile and where the telephone uses omni-directional microphones (abstract, col. 2, lines 40-51, and col. 7, lines 1-13).

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Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a cellular telephone located in an automobile using omni-directional microphones as taught by the speech-recognition, cellular telephone system of Oh '376 to the speech-recognition, cellular telephone system disclosed by Zou.

The suggestion/motivation for doing so would have been to: 1) increase the versatility and flexibility of cellular telephones by using them in an automobile as is notoriously well-known in the art, 2) increase the speech recognition efficiency and accuracy in "noisy vehicular environments" (Oh '376, col. 1, lines 15-29), and 3) increase microphone efficiency and effectiveness by accounting for the maximum frequency of speech (Oh '376, col. 7, lines 14-23).

With respect to human-inhabitable dwellings, Oh '376 teaches that the invention applies to other noisy environments such as boats (col. 2, lines 40-51) but fails to specifically disclose that the noisy environments include human-inhabitable dwellings.

However, "Official Notice" is taken that both the concept and advantages of using the combination of Zou in view of Oh '376 in a "human-inhabitable dwelling" that is also a noisy environments would have well known and expected in the art.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the combination of Zou in view of Oh '376 in "human-inhabitable dwellings" that are also noisy environments.

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The suggestion/motivation for doing so would have been to increase the flexibility and versatility of the combination of Zou in view of Oh '376 because noisy environments in human inhabitable dwellings would have wide-ranging and omnipresent, as is notoriously well known in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roland Foster whose telephone number is (703) 305-1491. The examiner can normally be reached on Monday through Friday from 9:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan S. Tsang, can be reached on (703) 305-4895. The fax phone number for this group is (703) 872-9309.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (703) 306-0377.



Roland G. Foster
Primary Patent Examiner
September 20, 2004